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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,737	07/06/2001	John David Whitenack	13DV13763	7008

29399 7590 10/04/2006

JOHN S. BEULICK (12729)
C/O ARMSTRONG TEASDALE LLP
ONE METROPOLITAN SQUARE
SUITE 2600
ST. LOUIS, MO 63102-2740

EXAMINER

O'CONNOR, GERALD J

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 10/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/900,737

Applicant(s)

Whitenack et al.

Examiner

O'Connor

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on August 31, 2006 (RCE w/Amdt).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on October 2, 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 31, 2006 has been entered.

Preliminary Remarks

2. This Office action responds to the amendment and arguments filed by applicant on August 31, 2006 in reply to the previous Office action on the merits, mailed May 31, 2006.

3. The amendment of claim 1 by applicant in the reply filed on August 31, 2006 is hereby acknowledged.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

5. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Salvo et al. (US 6,341,271).

Salvo et al. disclose a web-based supply chain system for improving business productivity, said system comprising: a server configured with a database of business information, said server further configured with a plurality of user interfaces associated with at least one business transactional application, said server further configured for allowing a user to access and retrieve said at least one business transactional application, said at least one business transactional application including a web page configured to provide access for a plurality of users internal to a business entity and to users external to the business entity to access data; at least one computer; and a network coupling said at least one computer to said server. Note that, in making this rejection, claim recitations drawn to the nature/characterization of the particular non-functional descriptive material being acted upon by the claimed *apparatus* (i.e., what the “data” is “comprising” and/or is “relating to”) have been deemed merely directed to an intended usage of the device, hence, afforded little patentable weight. See MPEP §§ 2114 and 2173.05(g).

Regarding claim 2, the business information database of Salvo et al. includes information relevant to a plurality of supply chain processes, said server further configured to store and download data relevant to at least one of the supply chain processes.

Regarding claim 3, the supply chain processes of Salvo et al. includes at least one of demand planning, planning and scheduling, configuration management, order management, procurement, component manufacturing, assembly and test, logistics, and billing and collection.

Regarding claim 4, the server of Salvo et al. is further configured to allow a user to: set and input inventory requirements; and monitor a supplier's availability to ship inventory.

Regarding claim 5, the server of Salvo et al. is further configured to: provide data for buying and related activities including at least one of globalization, long-term agreements, and raw material purchasing; and integrate data from a plurality of purchase databases.

Regarding claims 6-8, the server of Salvo et al. is further configured to track, store, and dispose data relating to non-conformances (quality control); summarize historical performance data in pre-defined categories; integrate future demand schedules based on the summarized data; predict potential manufacturing problems based on the summarized data; maintain process capability data for pre-determined part characteristics; and, receive operational metrics requiring monitoring. See, for example, the description of control unit 114 in column 8, particularly in lines 35-50.

Response to Arguments

6. Applicant's arguments filed August 31, 2006 have been fully considered but they are not deemed persuasive.

7. Regarding the arguments concerning applicant's functional language attempting to describe what the claimed apparatus *does*, as opposed to describing what the claimed apparatus *is*, "apparatus claims cover what a device *is*, not what a device *does*." See *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original). See, also, MPEP §§ 2114 and 2173.05(g).

Note that the claimed "data" is merely non-functional descriptive material. Whatever the claimed "data" may "comprise" or "relate to" is completely irrelevant to the claimed "apparatus," as long as the prior art apparatus is capable of performing the same intended use (i.e., the same claimed intended use need not be expressly disclosed in the prior art).

8. To the extent that applicant is arguing that the references applied in the rejection fail to use the same names for certain elements as the names used by applicant, the argument is irrelevant, as it is noted that the disclosure in a reference must show the claimed elements arranged in the same manner as in the claims, but need not be in the identical words as used in the claims in order to be anticipatory. See *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

Additionally, note that, during patent examination, the pending claims must be interpreted as broadly as their terms reasonably allow. See *In re Zletz*, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to the disclosure.
10. All rejected claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

11. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, **Jerry O'Connor**, whose telephone number is **(571) 272-6787**, and whose facsimile number is **(571) 273-6787**.

The examiner can normally be reached weekdays from 9:30 to 6:00.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Mr. Alexander Kalinowski, can be reached at **(571) 272-6771**.

Official replies to this Office action may be submitted by any *one* of fax, mail, or hand delivery. **Faxed replies are preferred and should be directed to (571) 273-8300**. Mailed replies should be addressed to "Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450." Hand delivered replies should be delivered to the "Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA 22314."

GJOC

September 30, 2006

 9/30/06

Gerald J. O'Connor
Primary Examiner
Group Art Unit 3627